

DOCKET NO: NNH-CV17-6072389-S	:	SUPERIOR COURT
	:	
ELIYAHU MIRLIS	:	J.D. OF NEW HAVEN
	:	
V.	:	AT NEW HAVEN
	:	
YESHIVA OF NEW HAVEN, INC. FKA	:	
THE GAN, INC. FKA THE GAN	:	
SCHOOL, TIKVAH HIGH SCHOOL AND	:	
YESHIVA OF NEW HAVEN, INC.	:	JUNE 12, 2019

**DEFENDANT’S (1) OBJECTION TO MOTION FOR JUDGMENT OF STRICT
FORECLOSURE, (2) MOTION TO DISCHARGE JUDGMENT LIEN AND
SUBSTITUTE BOND, AND (3) MOTION TO CONTINUE HEARING ON MOTION
FOR JUDGMENT OF STRICT FORECLOSURE**

The defendant, The Yeshiva of New Haven, Inc. (the “Yeshiva” or the “Defendant”), hereby objects to the *Motion for Judgment of Strict Foreclosure* (Doc. No. 113, the “Strict Foreclosure Motion”), filed by the plaintiff, Eliyahu Mirlis (the “Plaintiff”), moves to discharge the judgment lien against the Property (as defined below), and moves to continue the hearing on the Strict Foreclosure Motion scheduled for June 17, 2019, as evidence will be presented and more time is needed to (a) depose Plaintiff’s appraiser and (b) to disclose valuation and environmental experts as rebuttal witnesses on the issue of value.

As set forth herein, the Strict Foreclosure Motion should be denied because (a) there is a dispute as to the value of the property that is the subject of the Strict Foreclosure Motion, 765 Elm Street, New Haven, Connecticut (the “Property”) and (b) Defendant has previously filed a *Motion to Substitute Bond* (Doc. No. 106, the “Motion to Substitute”), which has not been acted on and, pursuant to statute, Defendant has an absolute right to bond off Plaintiff’s judgment lien. In support hereof Defendant submits as follows:

I. FACTS AND BACKGROUND

A. Factual Background

On July 7, 2017, Plaintiff filed a certificate of judgment lien (the “Judgment Lien”) against the Property with the Office of the City Clerk for the City of New Haven, Connecticut. Thereafter, on July 31, 2017, Plaintiff initiated the instant action by filing a complaint seeking foreclosure of the Judgment Lien. On November 8, 2017, Plaintiff filed his Motion for Summary Judgment in the instant case. The Yeshiva did not oppose entry of summary judgment as to liability only, but instead filed his Motion to Substitute. Plaintiff has now moved for judgment of strict foreclosure.

B. Procedural History

On June 6, 2017, final judgment entered against the Yeshiva in the U.S. District Court case styled *Eliyahu Mirlis v. Daniel Greer, et al.*, Case No. 3:16-CV-00678 (the “District Court Case”) in the amount of \$21,749,041.10 (the “Judgment”). Subsequently, on June 28, 2017, the Yeshiva filed a motion for new trial in the District Court Case pursuant to Fed. R. Civ. P. 59(a) (the “New Trial Motion”) seeking either an order granting a new trial or remittitur of the Judgment on the basis that the evidence could not fairly support the jury’s award of non-economic damages.

On October 27, 2017, the Yeshiva filed a motion for relief from final judgment (the “Motion for Relief”) in the District Court Case on grounds that newly-discovered evidence had been brought to the attention of the Yeshiva thereby warranting relief under Fed. R. Civ. P. 60(b)(2).

The District Court heard oral argument on the New Trial Motion and Motion for Relief on December 8, 2017, and denied both motions. As such, on December 15, 2017, the Yeshiva

filed a Notice of Appeal indicating that the Yeshiva seek review by the United States Court of Appeals for the Second Circuit from the Judgment and the District Court's denial of the New Trial Motion and Motion for Relief. Oral argument on said appeal was recently heard, but no decision has yet been rendered.

II. LAW AND ARGUMENT

The Yeshiva seeks to exercise its absolute statutory right to substitute a cash bond as security for the Judgment in exchange for discharge of the Judgment Lien on its Property pursuant to Conn. Gen. Stat. § 52-380e, which provides:

When a lien is placed on any real or personal property pursuant to section 52-355a or 52-380a, the judgment debtor may apply to the court to discharge the lien on substitution of (1) a bond with surety or (2) a lien on any other property of the judgment debtor which has an equal or greater net equity value than the amount secured by the lien. ***The court shall order such a discharge on notice to all interested parties and a determination after hearing of the sufficiency of the substitution.*** The judgment creditor shall release any lien so discharged by sending a release sufficient under section 52-380d by first class mail, postage prepaid, to the judgment debtor.

In determining whether the proposed substitution is sufficient, a court must analyze both the qualitative and quantitative features of the substitution. *Jefferson v. SBD Kitchens, LLC*, 2015 WL 425156, at *1 (Conn. Super. Ct. Jan. 7, 2015). Concerns over the insufficiency of a proposed substitution often involve situations wherein a judgment debtor seeks to substitute a lien on alternative real property owned by the judgment debtor and the value of said proposed alternate property is unclear or questionable. For instance, in *Jefferson*, the court declined to permit the substitution of alternate real property when it seemed likely that the two lots offered as substitution would be merged for zoning purposes in the near future, thereby negatively impacting the value of the properties and providing inadequate security for the judgment creditor. *Id.* at *4. Similarly, in *Harbor Federal Sav. & Loan Ass'n v. Seibold*, 1991 WL 240451,

at *1 (Conn. Super. Ct. Nov. 8, 1991), in the context of a judgment debtor's request to modify a prejudgment remedy of attachment, the court denied the substitution of an encumbered property in which the judgment debtor's equity was \$208,000 for an unencumbered property which was worth \$210,000.00. Although the proposed substitute property was close in value, it offered a lesser degree of quality of security to the judgment creditor due to the encumbrance of a first mortgage.

Here, unlike the above-described situations where issues as to the sufficiency of value and quality of the proposed substitution – i.e. a cash bond – are not present, the Court should grant the Yeshiva's request. The Yeshiva seeks to substitute a cash bond for the Property in the amount of the fair market value of the Property, thereby providing the same security with respect to Plaintiff's Judgment as that provided by the Property. *F.D.I.C. v. Bombero*, 37 Conn. App. 764, 768 (1995) ("Section 52-380e provides for substitution of a lien on 'other property.' Here, the cash that was deposited with the third party stakeholder constituted the 'other property.'"). Further, "[t]he transfer of a judgment lien to property of equal or greater equity value is a matter of right under the statute." *R.S. Silver Enterprises, Inc. v. Pascarella*, 2016 WL 785418, at *1 (Conn. Super. Ct. Feb. 9, 2016) (citing *Feuser v. Lampron*, 6 Conn. App. 350 (1986); see *Brainard v. Smyth Manufacturing Co.*, 178 Conn. 250, 253 (1979) ("The purpose of the statute is to make attachment security for a claim, not a weapon over the head of defendant.")). Accordingly, the Court should permit the Yeshiva to discharge the Judgment Lien with respect to the Property upon substitution of an acceptable bond or other security in the amount of the fair market value of the Property. Thus, the Court must evaluate the fair market value of the Property.

The appraisal submitted by Plaintiff is far too high and odd in many ways. First, it acknowledges recent and proximate sales, but then discards them as “below market value,” yet does not explain why. It then includes sales from much different locales – not an urban setting – it considers appropriate. Second, the appraisal also acknowledges substantial environmental concerns (asbestos) but does not take that into account in valuing the property. In sum, a deposition of Plaintiff appraiser is necessary to ascertain whether the appraisal is even determinative of value. Thereafter, the Yeshiva intends to disclose its own expert appraiser¹ and environmental engineer to provide the Court with a true measure of fair market value. Accordingly, a period of discovery and an evidentiary hearing is necessary.

Plaintiff may argue that it is entitled to a judgment of strict foreclosure, the only issue is value for purposes of the Motion to Substitute. However, the Yeshiva is clearly allowed to avoid entry of a foreclosure judgment against it and discharge the underlying lien. Thus, adjudication of the Motion to Substitute must be decided prior to the Strict Foreclosure Motion.

Accordingly, the Court should (a) adjourn the hearing set for June 17, 2019 concerning the Strict Foreclosure Motion to afford the Yeshiva reasonable time to depose the Plaintiff’s appraiser and disclose its own experts, (b) set a hearing on the Motion for Substitute, and (c) mark off the Strict Foreclosure Motion.

¹ The Yeshiva previously retained Patrick Wellspeak of Wellspeak Dugas & Kane LLC as its real estate appraiser and consultant. In August 2017, Mr. Wellspeak appraised the Property at \$375,000, before taking into account environmental matters. A copy of the Executive Summary of the 2017 appraisal report is attached hereto as Exhibit A. Mr. Wellspeak is being engaged to update his prior appraisal.

THE DEFENDANT:

By: /s/ Jeffrey M. Sklarz
Jeffrey M. Sklarz
Green & Sklarz LLC
700 State Street, Suite 100
New Haven, CT 06511
(203) 285-8545
Fax: (203) 823-4546
jsklarz@gs-lawfirm.com

CERTIFICATE OF SERVICE

This is to certify that on June 12, 2019, a copy of the foregoing was sent to all appearing parties and counsel of record as follows via electronic email:

Matthew Beatman
John L. Cesaroni
Zeisler & Zeisler, P.C.
10 Middle Street, 15th Floor
Bridgeport, Connecticut 06604
mbeatman@zeislaw.com
jcesaroni@zeislaw.com

/s/ Jeffrey M. Sklarz

EXHIBIT A



WELLSPEAK DUGAS & KANE, L.L.C.

Real Estate Appraisal & Consulting

September 12, 2017

Jeffrey M. Sklarz, Esquire
Green & Sklarz, LLC
700 State Street, Suite 100
New Haven, Connecticut 06511

Re: Yeshiva of New Haven
765 Elm Street
New Haven, Connecticut 06511

Dear Mr. Sklarz:

Per your authorization, we have examined the above-referenced property for the purpose of estimating its market value as of August 17, 2017, coincident with the date of the last physical inspection of the property. The interest appraised is the fee simple estate. It is our understanding that this appraisal report is being prepared to assist the client, Yeshiva of New Haven, Inc. and its counsel in the evaluation of the real estate for internal purposes. A copy of the letter of authorization is included in the Addenda to this appraisal report as Exhibit A.

As you requested, we have prepared an Appraisal Report in a summary format, as defined in the body of the appraisal herein by Wellspeak Dugas & Kane, LLC. The Scope of Work includes any necessary data and analysis in support of the assignment results with a thorough presentation of the relevant data, analysis, and conclusions using the Sales Comparison Approach to value to produce credible results. Further, the results and analysis are summarized rather than fully described. This report satisfies appropriate federal, state and industry (USPAP) standards.

The appraised property consists of a 43,485 square foot (0.998-acre) site located along the northwest corner of Elm Street and Norton Street in the city of New Haven, Connecticut. Improvements on the site include a two-story school. According to the assessor's field card, the structure was originally constructed in 1900 and it contains 20,469 square feet of above ground building area and a 6,689 square foot partially finished basement. It is our opinion that while the basement is functional and usable it has less utility than the above grade floors.

As of the date of valuation, the improvements are considered to be in below average physical condition. While the building has recently been used as a school it appears that it will be used on a limited basis for at least this school year. In completing this report we have reviewed various conversions of older schools, such as:

- Griffin School in Waterbury on the corner of Davis Street and Main Street, which was demolished to make way for a CVS Pharmacy.
- LoPresti School in Seymour, which is in the process of being converted to a 42 unit apartment building.
- Community School in Prospect, which was adapted for use as a community center.
- Clarence A. Bingham & Clara T. O'Connell schools in Bristol, which were purchased for redevelopment as independent-living senior housing.

In addition to the continued use by the owner, there is the potential of the property being purchased for either redevelopment or continued use as a school. In either case there is a limited number of potential buyers/users for older schools, such as the subject.

The basic assumptions and limiting conditions on which our valuation is based are detailed within the body of this report. These include all assumptions regarding environmental conditions and the Americans with Disabilities Act.

In our opinion, the market value of the fee simple interest, as of August 17, 2017, is best represented by the following amount:

THREE HUNDRED SEVENTY FIVE THOUSAND DOLLARS
\$375,000

The Appraisal Report and Addenda that follows set forth in summary form pertinent data and analyses leading to the conclusions presented.

Very truly yours,



Patrick J. Wellspeak, MAI
State of CT – General Certified Real Estate Appraiser
License No. RCG.0000618



Dominick J. Galletti
CT Provisional Real Estate Appraiser
License No. RSP.0002003